IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

MONDAY, THE 1ST JANUARY 2007 / 11TH POUSHA 1928

OP.No. 18575 of 2000(J)

PETITIONER:

K.KONDALVARNAN, KUNDUTHODIKALAM,
P.O.KALLUVAZHI,
PALAKKAD DISTRICT 679 514.

BY ADV. SRI.N.NANDAKUMARA MENON
SRI.MURALI PURUSHOTHAMAN

RESPONDENTS:
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1. **STATE OF KERALA REP.BY THE SECRETARY, TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT, TRIVANDRUM.**

2. **THE ASSISTANT EDUCATIONAL OFFICER, CHERPULASSERY, PALAKKAD DISTRICT.**

3. **THE DEPUTY DIRECTOR(EDUCATION), PALAKKAD.**

4. **THE JOIN T REGISTRAR OF CO-OPERATIVE SOCIETIES, PALAKKAD.**

5. **THE DEPUTY TAHSILDAR (R.R), OTTAPALAM.**

6. **ACCOUNTANT GENERAL (A&E), KERALA, TRIVANDRUM.**

BY GOVERNMENT PLEADER SMT.R.BINDU

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 01/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP.NO.49472/2000 IN OP. NO.18575/2000

DISMISSED

1.1.2007 **SD/- K.BALAKRISHNAN NAIR, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE JUDGMENT DT.28.8.87 IN OP. NO.7050/87-L PASSED BY THE HONOURABLE HIGH COURT OF KERALA.

EXT.P2:- COPY OF THE ORDER G.O.(Rt) NO.3406/89/G1..EDN. DT.2.11.89 PASSED BY THE 1ST RESPONDENT.

EXT.P3:- COPY OF THE ORDER NO.A5/121/86 DT.20.8.91 PASSED BY THE 3RD RESPONDENT.

E.XT.P4:- COPY OF THE PROCEEDINGS NO.PR 6/PENS/643/EE/97-98/544 DT.9.12.97 OF THE 6TH RESPONDENT.

EXT.P5:- COPY OF THE REPRESENTATION DT.30.6.97 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P6:- COPY OF THE DEMAND NOTICE UNDER SECTION 7 DT.3.5.2000 ISSUED TO THE PETITIONER BY THE 5TH RESPONDENT.

EXT.P7:- COPY OF THE NOTICE OF DEMAND PRIOR TO ATTACHMENT OF LAND DT.3.5.2000 ISSUED TO THE PETITIONER BY THE 5TH RESPONDENT.

EXT.P8:- COPY OF THE SALE NOTICE NO.R1-1/2000-01/OM1 DT.18.9.2000 ISSUED TO THE PETITIONER BY THE TAHSILDAR OTTAPALAM.

I.A.NO.1071/2003

EXT.P8:- COPY OF THE MEDICAL CERTIFICATE DT.22.6.01 ISSUED BY THE DR.R.K.KALYAN SINGH, CHIEF OF ANESTHESIA & SENIOR CONSULTANT MEDICAL SUPERINTENDENT.

EXT.P9:- COPY OF THE LETTER NO.A2/346/2002 DT.25.9.002 ISSUED BY THE SUB TREASURY OFFICER, SREEKRISHNAPURAM TO THE PETITIONER.

EXT.P10:- COPY OF THE LETTER NO.P.LBY.TR/880/LQ/10 DT.22.10.02 ISSUED Y THE ASSISTANT ACCOUNTS OFFICER, TVM. TO THE PETITIONER.

EXT.P11:- COPY OF THE REPRESENTATION DT.24.12.02 SUBMITTED BY THE PETITIONER BEFORE THE 6TH RESPONDENT.

EXT.P12:- COPY OF THE COMMUNICATION NO.PEN.LBY/TR/1083/CQ/172 DT.3.2.03 ISSUED BY THE ACCOUNTS OFFICER, THIRUVANANTHAPURAM.

/TRUE COPY/

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K.BALAKRISHNAN NAIR, J.

O.P. NO. 18575 OF 2000-J

JUDGMENT

The petitioner was the Headmaster of a Government U.P. School, who retired from service on 31.3.1994. This Original Petition was filed by him, feeling aggrieved by the delay from the part of the respondents to release the various terminal benefits due to him. At the time of hearing, the learned counsel for the petitioner submitted that the main subsisting grievance of the petitioner is concerned with the non-payment of D.C.R.G and also the omission of the respondents to revise his salary, in the light of 1988 and 1994 pay revisions. He seeks consequential payment of arrears of salary including leave surrender salary. He also points out that the two spells during which he was under suspension and the period he was under reversion were also not regularised.

2. The brief facts of the case are the following: The petitioner was suspended from service on 18.2.1987 in contemplation of disciplinary proceedings, involving an incident of manhandling one Mr.Rajan, who was a P.D. Teacher in his school. Pursuant to the direction of this Court, the Director of Public Instruction revoked the suspension of the petitioner and

ordered his reinstatement on 11.11.1987 without prejudice to the proceedings against him. Finally, the disciplinary proceedings culminated in an order dated 22.8.1989, reverting him from the post of Headmaster to that of P.D. Teacher. The petitioner appealed. The Government in appeal, set aside the reversion by Ext.P2 order dated 2.11.1989. Pursuant to the said appellate order, he was reinstated in service as Headmaster in the Government U.P. School, Koodallur. The petitioner submits, though the disciplinary proceedings ended in his favour, the period he was under suspension from 18.2.1987 to 11.11.1987 and the period he was under reversion were not regularised. While the petitioner was working as the Part-time Administrator of the Co-operative Society of his school, the aforementioned Rajan was its Secretary. On the basis of a complaint filed by the said Mr.Rajan, a vigilance case was registered against him for misappropriation of funds of the Society. He was convicted by the Judicial First Class Magistrate's Court, Palakkad in C.C.No.163/1991. Based on his conviction, he was again suspended from service on 20.8.1991. The petitioner again appealed against his suspension and he was ordered to be reinstated in service on 26.10.1991 and was subsequently posted as Headmaster in another U.P.School. The petitioner retired from service on 31.3.1994. The criminal appeal 16/98 filed by him against the conviction in

C.C.No.163/1991 was finally allowed by judgment dated 16.9.2002, by the Additional Sessions Court (Fast Track), Palakkad. The petitioner submits, he was honourably acquitted, as evident from the observations of the learned Sessions Judge in the appellate judgment.

3. During the pendency of the criminal appeal before the Sessions Court, this Original Petition was filed, seeking appropriate directions for the release of the terminal benefits due to him, regularisation of his suspension/reversion period, re-fixation of his pay in the light of the pay revisions of 1988 and 1994 and also other consequential reliefs. The petitioner points out that in view of the honourable acquittal by the criminal court, he is entitled to have his service regularised for the period he remained either under suspension or was reverted to the lower post. He also points out that he is entitled to get the entire terminal benefits, including full amount of D.C.R.G with reasonable interest. The revenue recovery steps initiated as per Exts.P6 and P7, to recover the alleged liability due from him, based on the allegations of misappropriation, are also liable to be set aside, it is submitted.

4. The respondents have filed a statement, stating that the terminal benefits due to the petitioner could not be finalised or settled, owing to his

non-co-operation. It is also submitted that the acquittal of the petitioner by the Sessions Court is a development which took place long after his retirement and also after the filing of the Original Petition.

5. Heard the learned counsel on both sides. In view of the decision of the Government in appeal, in the earlier disciplinary proceedings, the period the petitioner was out of service on suspension in connection with the said proceedings, is liable to be regularised as duty. Further, the period he was reverted and worked in the lower post shall also be treated as service rendered in the post of Headmaster. The benefits flowing from the pay revisions of 1988 and 1994, if so far, not granted to him, shall be granted without any further delay. Based on the extension of the pay revision benefits, the arrears of salary payable to him as a result of regularisation of the suspension and reversion periods shall be re-computed and paid to him. These things, the competent authority among the respondents shall do within three months from the date of production of a copy of this judgment. The liability fixed against the petitioner for the alleged misappropriation of the funds of the Society shall be reconsidered by the competent authority, in the light of the appellate judgment in his favour, as per which the petitioner claims, he was honourably acquitted. If the petitioner produces the said judgment and seeks review of the fixation of liability, the same shall be

reviewed and fresh orders passed by the same authority which fixed the liability against the petitioner. This the said officer shall do within three months from the date of production of a copy of this judgment. Since the liability has to be reviewed, Exts.P6 and P7 revenue recovery notices shall not be enforced. The competent authority/authorities while passing orders as directed above, shall afford an opportunity of being heard to the petitioner.

The Original Petition is disposed of as above.

1st January, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/

K.BALAKRISHNAN NAIR,J.

O.P. NO.18575/2000-J

JUDGMENT

1.1.2007